

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4432 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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DHANJIBHAI B PATEL

Versus

GOVT. OF GUJARAT & ORS.

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Appearance:

MR JD AJMERA for Petitioner

MR HL JANI for Respondent No. 1, 2 & 3

MS MAMTA VYAS for Respondent No. 4

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/12/96

ORAL JUDGMENT

Heard learned counsel for the parties.

2. The petitioner was the employee of respondent No.4 in the higher secondary school run by it on the post of Librarian. The petitioner has challenged, by this Special Civil Application, the order of the respondent No.4 under which he was dismissed from services after

holding inquiry as well as the orders of respondents No.2 and 3 confirming that order.

3. The learned counsel for the parties are in agreement that the State of Gujarat has constituted a Tribunal for hearing appeals in the matter of disciplinary action of the employees of the higher secondary schools and as such, this writ petition may be disposed of with liberty to the petitioner to approach to the Tribunal. However, the learned counsel for the petitioner has apprehension that the appeal may be dismissed by the Tribunal only on the ground of limitation. I do find sufficient justification in the apprehension of the petitioner. When an appeal against the order is available to the petitioner, may be after filing of the Special Civil Application, then it is better and in the larger interest of the parties that the petitioner may be given a change to avail of that remedy. The learned counsel for the parties are also in agreement that the Appellate tribunal has much more wider powers in the matter as it may also go on the questions of facts, and if necessary it can also record evidence. So that remedy is more appropriate and effective. However the apprehension of the learned counsel for the petitioner that the appeal before the Tribunal may be dismissed on the ground of limitation can be taken care of by this Court. It is a matter where there is a provision for condonation of delay empowering the Appellate Authority to condone the delay and the same can be condoned by it as the party has sufficient cause not to approach it within time. It is a case where the petitioner has approached to this Court within reasonable time, but this Court is now directing him to first avail of the right of alternative remedy. The petitioner was pursuing remedy available before this Court bonafidely and hence it would be a sufficient cause to condone the delay and it is expected that if an appeal is preferred by the petitioner within a period of eight weeks from today, it shall not be dismissed as being barred by time. This matter is pending before this Court for the last 13 years and as such it is expected from the Tribunal that it may give precedence to this appeal, if filed by the petitioner, in hearing.

4. In the result, this writ petition is disposed of in terms that the petitioner shall file an appeal or application before the Higher Secondary Education Tribunal within a period of 8 weeks from today. The Tribunal shall consider the question of condonation of delay in the light of observations made above and it is expected that the appeal shall be decided within a period

of six months from the date of filing the same. Rule  
made absolute in aforesaid terms with no order as to  
costs.

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(sunil)